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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES A. FRY d/b/a FOX NETWORK
SYSTEMS,

Plaintiff,

v.

AZTEC DOBERMAN PINSCHER CLUB
OF SAN DIEGO,

Defendant.

AZTEC DOBERMAN PINSCHER CLUB
OF SAN DIEGO

Counter-Claimant

v.

JAMES A. FRY an individual and d/b/a
DOBERMANRESQ.COM; and
DOBERMANRESQ INC., a California
corporation,

Counter-Defendants.

Case No. 11-CV-1329 BTM (POR)

**JAMES A. FRY D/B/A FOX NETWORK
SYSTEMS ANSWER TO AZTEC DOBERMAN
PINSCHER CLUB OF SAN DIEGO'S
COUNTERCLAIM FOR DECLARATORY
JUDGMENT; INJUNCTIVE RELIEF; AND
DAMAGES**

Judge: Hon. Barry Ted Moskowitz

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1 COMES NOW Counter-Defendant, JAMES A FRY D/B/A FOX NETWORK SYSTEMS
2 (hereinafter "COUNTER-DEFENDANT") hereby answers the Counterclaim of Counter-claimant
3 AZTEC DOBERMAN PINSCHER CLUB OF SAN DIEGO (hereinafter "COUNTER-CLAIMANT")
4 as follows:

5 **ANSWER**

6 **I.**

7 Answering Paragraphs 33, 34, 35 and 36, these paragraphs call for legal conclusions which
8 require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally
9 and specifically each and every allegation contained therein.

10 **II.**

11 Answering Paragraph 37, COUNTER-DEFENDANT is without information sufficient to form
12 a belief as to the truth or falsity of the allegations of this paragraph and, therefore, deny generally and
13 specifically the allegations of this paragraph and every part thereof.

14 **III.**

15 Answering Paragraph 38, COUNTER-DEFENDANT admits there was a trial held in the
16 Superior Court of California, County of San Diego. However, CROSS-DEFENDANT denies each and
17 every other allegation contained in this paragraph in their entirety, and in each and every part thereof.

18 **IV.**

19 Answering Paragraph 39, COUNTER-DEFENDANT admits to the information contained in this
20 paragraph.

21 **V.**

22 Answering Paragraph 40, COUNTER-DEFENDANT denies the allegations of this paragraph
23 in their entirety, and in each and every part thereof.

24 **VI.**

25 Answering Paragraph 41, COUNTER-DEFENDANT denies the allegations of this paragraph
26 in their entirety, and in each and every part thereof.

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VII.

Answering Paragraph 42, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

VIII.

Answering Paragraph 43, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

IX.

Answering Paragraph 44, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

X.

Answering Paragraph 45, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

XI.

Answering Paragraph 46, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XII.

Answering Paragraph 47, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XIII.

Answering Paragraph 48, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XIV.

Answering Paragraph 49, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XV.

Answering Paragraph 50, COUNTER-DEFENDANT admits the substance of this paragraph.

XVI.

Answering Paragraph 51, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

XVII.

Answering Paragraph 52, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

XVIII.

Answering Paragraph 53, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

XIX.

Answering Paragraph 54, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

XX.

Answering Paragraph 55, this paragraphs call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXI.

Answering Paragraph 56, this paragraphs call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXII.

Answering Paragraph 57, this paragraphs call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

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XXIII.

Answering Paragraph 58, these paragraphs call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXIV.

Answering Paragraph 59, this paragraphs call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXV.

Answering Paragraph 60, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXVI.

Answering Paragraph 61, COUNTER-DEFENDANT denies the allegations of this paragraph in their entirety, and in each and every part thereof.

XXVII.

Answering Paragraph 62, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXVIII.

Answering Paragraph 63, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

XXIX.

Answering Paragraph 64, this paragraph call for legal conclusions which require no answer and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each and every allegation contained therein.

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1 XXX.

2 Answering Paragraph 65, this paragraph call for legal conclusions which require no answer and
3 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
4 and every allegation contained therein.

5 XXXI.

6 Answering Paragraph 66, COUNTER-DEFENDANT denies the allegations of this paragraph
7 in their entirety, and in each and every part thereof.

8 XXXII.

9 Answering Paragraph 67, this paragraph call for legal conclusions which require no answer and
10 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
11 and every allegation contained therein.

12 XXXIII.

13 Answering Paragraph 68, this paragraph call for legal conclusions which require no answer and
14 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
15 and every allegation contained therein.

16 XXXIV.

17 Answering Paragraph 69, COUNTER-DEFENDANT admits the allegations that the Digital
18 Millennium Copyright Act was used to force COUNTER-CLAIMANT to remove logos from its
19 websites which COUNTER-DEFENDANT believes are wrongfully being used. However, COUNTER-
20 DEFENDANT denies each and every other allegation contained in this paragraph.

21 XXXV.

22 Answering Paragraph 70, COUNTER-DEFENDANT denies the allegations of this paragraph
23 in their entirety, and in each and every part thereof.

24 XXXVI.

25 Answering Paragraph 71, COUNTER-DEFENDANT denies the allegations of this paragraph
26 in their entirety, and in each and every part thereof.

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1 XXXVII.

2 Answering Paragraph 72, COUNTER-DEFENDANT denies the allegations of this paragraph
3 in their entirety, and in each and every part thereof.

4 XXXVIII.

5 Answering Paragraph 73, this paragraph call for legal conclusions which require no answer and
6 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
7 and every allegation contained therein.

8 XXXIX.

9 Answering Paragraph 74, this paragraph call for legal conclusions which require no answer and
10 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
11 and every allegation contained therein.

12 XL.

13 Answering Paragraph 75, this paragraph call for legal conclusions which require no answer and
14 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
15 and every allegation contained therein.

16 XLI.

17 Answering Paragraph 76, COUNTER-DEFENDANT lack sufficient information to either admit
18 or deny the allegations in this Paragraph, and therefore, denies each and every allegation therein.

19 XLII.

20 Answering Paragraph 77, COUNTER-DEFENDANT denies the allegations of this paragraph
21 in their entirety, and in each and every part thereof.

22 XLIII.

23 Answering Paragraph 78, this paragraph call for legal conclusions which require no answer and
24 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
25 and every allegation contained therein.

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1 XLIV.

2 Answering Paragraph 79, this paragraph call for legal conclusions which require no answer and
3 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
4 and every allegation contained therein.

5 XLV.

6 Answering Paragraph 80, COUNTER-DEFENDANT denies the allegations of this paragraph
7 in their entirety, and in each and every part thereof.

8 XLVI.

9 Answering Paragraph 81, this paragraph call for legal conclusions which require no answer and
10 to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically each
11 and every allegation contained therein.

12 XLVII.

13 Answering Paragraph 82, these paragraphs call for legal conclusions which require no answer
14 and to the extent an answer is required, COUNTER-DEFENDANT denies generally and specifically
15 each and every allegation contained therein.

16 **AFFIRMATIVE DEFENSES TO EACH AND EVERY**
17 **CLAIM IN THE COUNTER-COMPLAINT**

18 I.

19 The Complaint fails to state sufficient facts to constitute a cause of action upon which relief can
20 be granted.

21 II.

22 The Counter Claim fails to set forth a case or controversy as required by Federal law.

23 III.

24 COUNTER-CLAIMANT lacks standing to assert the claims herein as required by Federal law.

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1 IV.

2 COUNTER-CLAIMANT fails to allege with specificity any acts or omissions by COUNTER-
3 DEFENDANT which proximately caused or which would cause damages, if any, to COUNTER-
4 CLAIMANT and injuries and damages, if any, allegedly sustained by COUNTER-DEFENDANT are
5 speculative, indefinite and uncertain.

6 V.

7 COUNTER-DEFENDANT is informed and believes and thereon alleges that COUNTER-
8 CLAIMANT has acted in bad faith, that COUNTER-CLAIMANT has no rights to the material which
9 is the subject of this litigation; COUNTER-CLAIMANT'S sole purpose in seeking these materials and
10 in bringing this action was not to remedy harm done or threatened to itself or to others similarly situated.

11 VI.

12 COUNTER-DEFENDANT is informed and believes and thereon alleges that COUNTER-
13 CLAIMANT is not a proper party-in-interest.

14 VII.

15 COUNTER-CLAIMANT'S action, if any, were based on their exercise of a constitutionally
16 protected right. As a result, COUNTER-CLAIMANT is not entitled to the relief requested in the
17 Counter-Complaint.

18 VIII.

19 COUNTER-CLAIMANT'S conduct bars them from any recovery herein by virtue of the
20 equitable doctrine of estoppel.

21 IX.

22 COUNTER-CLAIMANT'S conduct bars them from any recovery herein by virtue of the
23 equitable doctrine of waiver.

24 X.

25 Any prospective recovery herein is barred by the equitable doctrine of laches.

26 XI.

27 Any prospective recovery herein is barred by the equitable doctrine of "unclean hands."

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XII.

This action is time-barred by virtue of the applicable statute of limitations, including, but not limited to, the provisions of the California Code of Civil Procedure.

XIII.

COUNTER-CLAIMANT has failed to mitigate its damages, if any, thus barring any recovery herein.

XIV.

COUNTER-CLAIMANT by its actions and omissions has, expressly or implicitly approved, ratified and/or consented to the alleged acts and omissions of COUNTER-DEFENDANT and thus is not entitled to any relief from COUNTER-DEFENDANT.

XV.

COUNTER-DEFENDANT'S actions were privileged and/or as of right and, thus, COUNTER-CLAIMANT is barred from asserting its claims against COUNTER-DEFENDANT.

XVI.

COUNTER-CLAIMANT by its actions and omissions has, expressly or implicitly, approved, ratified and/or consented to the alleged acts and omissions of COUNTER-DEFENDANT, and thus, is not entitled to any relief from COUNTER-DEFENDANT.

XVII.

COUNTER-CLAIMANT'S injury, damage or loss, if any, was directly and proximately caused or contributed by COUNTER-CLAIMANT'S intentional and/or negligent actions. COUNTER-CLAIMANT'S claims should be barred or diminished by the proportion that its own conduct proximately caused injury, damage or loss, if any.

XVIII.

The damages suffered by COUNTER-CLAIMANT, if any, was caused in part or in whole by COUNTER-CLAIMANT and unknown parties, and therefore, COUNTER-DEFENDANT'S liability, if any, should be apportioned based on liability, if any, of COUNTER-CLAIMANT and unknown parties.

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XIX.

The Complaint, and each cause of action therein, is uncertain.

XX.

COUNTER-DEFENDANT'S alleged use of COUNTER-CLAIMANT'S materials is not in violation of Federal Copyright Law due to COUNTER-CLAIMANT not having any valid copyright claim and that COUNTER-DEFENDANT is the rightful owner of the images.

XXI.

COUNTER-CLAIMANT'S copyright claim is not proper as the copyright action is based on images of which COUNTER-DEFENDANT is the rightful owner of.

XXII.

COUNTER-CLAIMANT'S copyright claim is not proper as the images upon which their copyright claim is based on lack originality pursuant to 17 U.S.C.A section 102.

XXIII.

COUNTER-CLAIMANT'S copyright claim is barred by the Fair Use Doctrine pursuant to 17 U.S.C.A. section 107.

XXIV.

COUNTER-CLAIMANT'S copyright claim is not proper as the images their copyright claim is based on are not copyrightable images.

XXV.

COUNTER-CLAIMANT'S copyright claim is not proper as COUNTER-CLAIMANT abandoned and waived their copyright.

XXVI.

COUNTER-CLAIMANT'S copyright claim is not proper as COUNTER-DEFENDANT had no notice of COUNTER-CLAIMANT'S copyright under 17 U.S.C.A. section 401.

XXVII.

COUNTER-CLAIMANT'S copyright claim is not proper as COUNTER-CLAIMANT and COUNTER-DEFENDANT made use of a common source.

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1 XXVIII.

2 COUNTER-CLAIMANT copyright claim is barred by the Independent Creation Doctrine.

3 XIX.

4 COUNTER-DEFENDANT alleges that it presently has insufficient knowledge or belief as to
5 whether it may have additional affirmative defenses available. COUNTER-DEFENDANT reserves the
6 right to assert any additional defenses in the event that discovery indicates that it would be appropriate.

7 **WHEREFORE**, COUNTER-DEFENDANT prays as follows:

- 8 1. That the action be dismissed with prejudice;
9 2. That COUNTER-CLAIMANT take nothing by its actions;
10 3. That COUNTER-DEFENDANT recover its costs of suit incurred herein, including
11 attorneys' fees; and
12 4. For such other and further relief as the Court deems just and proper.

13 HAMILTON & McINNIS, L.L.P.
14 /s/ Patrick J. Kane

15 Dated: October 17, 2011

By:

16 Patrick J. Kane, Attorneys for Plaintiff, and
17 Counter-Defendant JAMES A. FRY, an
18 individual, d/b/a FOX NETWORK SYSTEMS,
19 DOBERMANRESQ.COM and
20 DOBERMANRESQ, INC.

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